

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-401-E - ORDER NO. 2011-180
MARCH 4, 2011

IN RE: David A. Gillespie, Sr.,)	ORDER RULING IN
Complainant/Petitioner)	FAVOR OF
)	RESPONDENT
v.)	
)	
Duke Energy Carolinas, LLC,)	
Defendant/Respondent)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) on a Complaint filed by David A. Gillespie, Sr. against Duke Energy Carolinas, LLC (“Duke Energy” or the “Company”). Mr. Gillespie is a long time Duke Energy Customer. Through his Complaint, Mr. Gillespie seeks to recover \$900 worth of energy that was lost due to a malfunctioning water heater. A hearing in this matter was held in the Commission’s offices on January 30, 2011, with Commission attorney Josh Minges presiding as the Hearing Examiner.

The parties at the hearing included pro se Complainant, David A. Gillespie, Sr., along with Duke Energy and the Office of Regulatory Staff (“ORS”). Duke Energy was represented by Bonnie Shealy, Esquire, who presented Duke’s Rate Director, Barbara Yarbrough, as a witness. ORS was represented by Shannon Bowyer Hudson, Esquire, who presented the Manager of ORS’s Department of Consumer Services, April Sharpe, as a witness. A Motion for a Directed Verdict was made at the close of the hearing by Duke Energy that remains outstanding.

According to the record and Mr. Gillespie's testimony, a water heater under his house leaked for approximately five (5) months, which was only discovered after his home was damaged as a result of the leak. He indicated that his non-regulated water utility, the Spartanburg Municipal Water System, issued him a credit for the cost of the water that leaked. Mr. Gillespie alleged that the \$900 increase in his electric bill was a result of the electric energy used to heat the water that leaked from the appliance, and that he should not have to pay for these charges as well.

According to ORS, its Consumer Services Staff informed Mr. Gillespie that the water heater is the consumer's responsibility and that the Company does not have funds in its approved rates to provide credits or compensate consumers for additional electricity consumed when appliances malfunction. The ORS staff also informed Mr. Gillespie that it would pass along his request to the Company for a courtesy credit; however, they stated that the Commission's regulations do not provide for billing adjustments due to the malfunction of a customer's appliance.

Duke Energy refused to issue a courtesy credit. The Company maintains that the problem causing the increased energy usage at Mr. Gillespie's residence was not a result of any problems with its facilities, but rather the direct result of a malfunctioning customer appliance. Duke Energy states that there is no dispute that the equipment in Mr. Gillespie's home consumed the electricity, and he was properly billed for the energy usage as it was registered at the meter. Additionally, Duke Energy states that there is no dispute over whether the meter functioned properly, and that the meter accurately

recorded the energy used. Duke Energy further argues that no allegation has been made that it acted inappropriately or violated any applicable statute or regulation.

DISCUSSION, FINDINGS, and RULING:

While it is unfortunate that Mr. Gillespie's malfunctioning water heater caused a significant increase in his electric bills, no allegations have been made that Duke Energy has done anything improper or in any way either caused or contributed to the malfunction. Likewise, no allegations have been made that Duke Energy in any way either caused or contributed to the additional use of electricity. The electric meter at Mr. Gillespie's residence was operating properly and accurately recorded the energy usage in question. In addition, Mr. Gillespie was accurately billed for that electricity.

As no statute or regulation has been violated, we next look to Duke Energy's Service Regulations, which were submitted as Hearing Exhibit 1 and are currently on file with its latest approved tariff. These Service Regulations act as the terms and conditions for which service is provided to customers. Article IX of Leaf E of the Company's Service Regulations, titled "Responsibility Beyond Delivery Point," states:

It is understood and agreed that the Company is merely a furnisher of electricity, deliverable at the point where it passes from the Company's wires to the service wires of the customer, or through a divisional switch separating the Customer's wires and equipment from the Company's wires and equipment. The Company shall not be responsible for any damage or injury to the buildings, motors, apparatus, or other property of the Customer due to lightning, defects in wiring or other electrical installations, defective equipment, or other cause not due to the negligence of the Company. The Company shall not be in any way responsible for the transmission, use or control of the electricity beyond the delivery point, and shall not be liable for any damage or injury to any person or property whatsoever, or death of any persons arising, accruing or resulting in any manner, from receiving or use of said electricity. (Emphasis added.)

The delivery point in this instance is the meter, and the Service Regulations clearly indicate that Mr. Gillespie is responsible for the electricity used by his water heater.

Although we are sympathetic with Mr. Gillespie's plight in this situation, we find that Duke Energy has not violated any statute or regulation. We also find that no allegation has been made that Duke Energy acted inappropriately or violated any applicable statute or regulation, and is not responsible for the mere use of electricity beyond the delivery point to the customer. Anything related to the usage of Mr. Gillespie's water heater is his responsibility, including increased usage due to a leak or any other cause beyond the Company's control. We further find that Duke Energy accurately billed Mr. Gillespie for the electricity at his residence. Therefore, for the foregoing reasons, we find in favor of Respondent, Duke Energy, and hold that it is not liable for the cost of energy lost due to the malfunctioning water heater at Mr. Gillespie's residence.

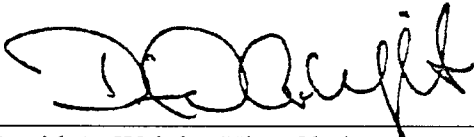
As a final matter, since this Order rules on the merits of Mr. Gillespie's Complaint, the Motion for Directed Verdict is deemed moot.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman
(SEAL)